far as reasonably possible, to take up such a position, and to drive in such a fashion, as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated: but whether he has fulfilled this duty must in every case be a question of fact, just as it is a question of fact whether, on any emergency disclosing itself, the following driver acted with the alertness, skill and judgment reasonably to be expected in the circumstances".

In *Smith* v. *Harris* [2] the principles of the law on negligence applicable to vehicles proceeding one behind the other was again carefully considered. That case involved a string of 5 motor-cyclists engaged on a treasure hunt in the course of which the leader made a sudden stop resulting in the fourth motor-cyclist running into the second. The plaintiff was riding on the pillion seat of the fourth motor-cycle and sustained injuries. It was held that both the leader and the fourth motor-cyclist were equally to blame. Scott L.J. said at page 963 —

"The essence of a band of motor cycles in a line such as that is that the speed should be so limited as to make it quite certain that each one, with the interval at which he is in fact following, can stop in time to avoid a predecessor in the case of any breakdown or sudden stop of any sort".

In both the cases I have cited above it was emphasised that the application of the principles laid down would depend on the particular facts before the court. It is clear that these judgments should be used as guides and not as binding authorities even in cases where the facts are more or less similar.

The question of contributory negligence was canvassed in the case of *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [3] by Bucknill L.J. in the following terms:—

". . . when one is considering the question of contributory negligence, it is not necessary to show that the negligence constituted a breach of duty to the defendant. It is sufficient to show lack of reasonable care by the plaintiff for his own safety".

As Denning L.J. said in *Jones* v. *Livox Quarries Ltd.* —[4]

"Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have forseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless".

I have borne in mind the proposition stated by Lord Hailsham in *Swadling* v. *Cooper* [5] to the effect that —

"Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence: the plaintiff has no right to complain if in the agony of the collision the defendant fails to take some step which might have prevented a collision unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances".

In the case of *Brown & Lynn* v. *Western S.M.T. Co.* cited above, Lord Justice-Clerk (Cooper) had the following observations to make on the duty of a following driver:—

"But the duty of the following driver is a continuous duty which persists independently of any actual emergency or of the leading driver's reaction to such emergency, and the question whether the following driver has failed in his duty cannot depend upon whether the leading driver has fulfilled his".

In all the circumstances of this case I am satisfied that the plaintiff contributed towards his own discomfiture. I find them equally to blame for the collision. In reaching this conclusion I have taken into account the fact that neither was an impressive witness, that both have varied their stories and that, had I been deciding the case strictly as it was pleaded, I would probably have found that the collision took place whilst both vehicles were in motion and that the plaintiff was solely to blame.

The plaintiff will accordingly receive half the agreed general damages i.e. $2,500 and half the special damage as assessed i.e. $340.

Judgment will, therefore, be entered for the plaintiff in the sum of $2,840 with the usual orders as to costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Donaldson & Burkinshaw.*

PHANG MOH SHIN v. COMMISSIONER OF POLICE, SINGAPORE

[O.C.J. (Chua J.) December 10, 1965]

[Singapore — Summons-in-Chambers No. 55 of 1965 In Suit No. 7 of 1965]

Administrative Law — Action for declaration — Dismissal of police constable by commanding officer — Appeal to Commissioner dismissed — Whether action will lie against the commissioner.

The plaintiff had issued a writ against the Commissioner of Police praying for a declaration that his dismissal from the Singapore Police Force was illegal, void, inoperative and of no effect. The complaint of the plaintiff was that he was never given adequate notice of the charge nor was he given any opportunity to rebut the charge and the evidence against him. Disciplinary proceedings had been taken against the plaintiff under the Police Force Ordinance, 1958, and as a result the Commanding Officer had ordered that he be dismissed. He appealed to the Commissioner of Police, who dismissed the appeal. The Commissioner of Police entered conditional appearance and applied for an order to set aside the service of the writ of summons on the contention that the Commissioner of Police was not the proper defendant as the complaint of the plaintiff was not against the Commissioner of Police but against the officer who held the inquiry.

Held: the complaint of the plaintiff was not only against the officer who held the inquiry and the commanding officer who dismissed him but also against the Commissioner of Police for dismissing his appeal and therefore the Commissioner of Police was a proper defendant in this case.

SUMMONS ADJOURNED TO OPEN COURT.

Lim Chor Pee for the plaintiff-respondent.

Tan Boon Teik (Solicitor-General) for the defendant-applicant.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case was a detective police constable of the Singapore Police Force. On the 18th May, 1963, after a disciplinary proceeding on a charge of "committing excess of duty by submitting false information against a male Chinese", the plaintiff was informed that he was dismissed from the Police Force with immediate effect. On the 10th June, 1963, the plaintiff appealed to the Commissioner of Police against his dismissal and on the 29th June, 1963, the Commissioner of Police dismissed the plaintiff's appeal.

The plaintiff on the 4th January, 1965, issued a writ of summons against the Commissioner of Police praying for a declaration that his dismissal from the Singapore Police Force "was illegal, void, inoperative and of no effect."

The writ was served on the Commissioner of Police who entered conditional appearance. On the 16th January, 1965, the Commissioner of Police took out a summons-in-chambers:

> "for an order that the service of the writ of summons in this action on the said defendant and all subsequent proceedings in this action may be set aside on the ground that the pretended service of the writ of summons herein on the said defendant was irregular and he was not bound to appear thereto."

The complaint of the plaintiff as disclosed in the statement of claim was that he "was never given any adequate notice of the charge nor was he given any opportunity to rebut the charge and the evidence against him."

The summons came before me. The Solicitor-General appeared for the Commissioner of Police. After hearing the parties I dismissed the application with costs. The Solicitor-General then requested that I hear further argument in regard to the application and the matter was adjourned to open court for further argument.

The contention of the Solicitor-General was that the Commissioner of Police was not a proper defendant in this suit as the complaint of the plaintiff was not against the Commissioner of Police but against the officer who held the inquiry.

The position of the Commissioner of Police in respect of disciplinary proceedings should be stated. By section 27(1) of the Police Force Ordinance (No. 32 of 1958) where a subordinate officer is found guilty of the charge by a commanding officer or any other officer authorised by him to conduct disciplinary proceedings, the commanding officer may order that the subordinate officer be dismissed. By section 27(3) the subordinate officer may appeal against the finding or punishment to the Commissioner of Police.

Now, the Commissioner of Police in his letter to the plaintiff dismissing his appeal said:

> "I have studied your grounds of appeal in conjunction with the record of the disciplinary proceedings and find that you were given a fair and proper trial in accordance with Police Regulations. I further find that there is no reason why the conviction and punishment of dismissal should not stand."

It seems to me that the complaint of the plaintiff is not only against the officer who held the inquiry, the commanding officer who dismissed him but also against the Commissioner of Police for dismissing his appeal.

It is to be noted that the Commissioner of Police in his letter to the plaintiff said that he found after studying the ground of appeal and the record of the disciplinary proceedings that the plaintiff was given a fair and proper trial. It would appear that if the allegations of the plaintiff are true then the Commissioner of Police contributed to the denial of natural justice and it seems to me that the plaintiff has an arguable case against the Commissioner of Police for dismissing his appeal and that the Commissioner of Police is a proper defendant in this case.

The application of the defendant is dismissed with costs.

Application dismissed.

Solicitors: *Chor Pee & Hin Hiong.*

GOVINDA RAJU & ANOR. v. LAWS

[O.C.J. (Raja Azlan Shah J.) December 10, 1965]

[K.L. — Civil Suit No. 401 of 1964]

Damages — Personal injury — Leg — 3" shortening.

Negligence — Failure to observe provisions of Highway Code — Failure to give way to through traffic when turning right — Contributory negligence — Agony of the moment — Damages.

Road Traffic — Highway Code — Failure to observe provisions of.

This was a claim for damages in respect of personal injuries sustained by both plaintiffs in a road accident. It appeared that the defendant was driving along a road and intended to turn to the right. He stopped, leaving sufficient room for vehicles to pass on his left, and when the oncoming traffic was clear he turned right into a lane. The plaintiff's motorcycle coming in the opposite direction saw the car swerving into his path and he swerved to the right to avoid the accident but knocked into the rear near side of the car. As a result the first plaintiff and his pillion rider the second plaintiff were injured. The second plaintiff suffered a fracture of the shaft of the right femur and 3" shortening. General damages were agreed at $27,000. The first plaintiff suffered laceration of the scalp and bleeding from the right ear. Section 18 of the Highway Code provides that when turning left or right drivers must always give way to through traffic.